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ATTY # U.S. District Eastern

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

CARL R. MENEFEE, SR.,

Plaintiff,

vs.

CITY OF COUNTRY CLUB HILLS,

Defendant.

No. 08C002948

Judge Leinenweber

Magistrate Judge Valdez

DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE
TO DEFENDANT'S MOTION TO DISMISS

NOW COMES Defendant, CITY OF COUNTRY CLUB HILLS, by and through its attorneys, NORTON, MANCINI & WEILER, and in reply to Plaintiff, CARL R. MENEFEE, SR.'s Response to Defendant's Motion to Dismiss, Defendant states as follows:\

1. In his response, Plaintiff contends that "Federal statute does provide a remedy for a violation of the provisions of Section 3789g(a)..." Plf.'s Resp. Def. Mtn. Dismiss ¶ 3 (July 14, 2008). This contention is 1) unsupported, as Plaintiff fails to identify the federal statute which he alleges provides a remedy for violation of Section 3789g(a); 2) erroneous, as the Polchowski decision, 714 F.2d 749 (7th Cir. 1983), reached the exact opposite conclusion; and 3) irrelevant, as Sec. 3789g(a) applies only to statistical or research information and the information at issue in this case is properly characterized as criminal history information as addressed in Sec. 3789g(b).

2. Plaintiff's vague contention that a federal statute provides a remedy for violation of Sec. 3789g(a) is unsupported by any argument or citation to legal authority and is therefore

without effect.

3. The Polchowski decision unequivocally bars private causes of action for violations of 3789g(a), finding that Congress intended to foreclose private enforcement of Sec. 3789g(a) against state or local officials. Polchowski, 714 F.2d at 752. Therefore, Plaintiff's contention that a federal statute provides a remedy for violation of Sec. 3789g(a) is simply wrong.

4. Section 3789g(a) applies only to statistical or research information, which is general information collected to be used solely for research and statistical summaries. Polchowski, 714 F.2d at 751. This information is normally gathered in a fashion which makes the information impossible to attribute to a specific individual. Id. Section 3789g(b) applies only to criminal history information, which is information regarding a specific individual's past conduct and includes such information as arrests, convictions, confinement and release. Id. As the information disclosed by Defendant in this matter was not anonymous, but specific to Plaintiff, and as it was not intended to be used for statistical analysis, but rather to evaluate Plaintiff's qualifications for employment with the City of Zion, it is properly characterized as criminal history information, and not statistical and research information. In fact, in paragraph six of his complaint and in paragraph five of his response, Plaintiff expressly characterizes the disclosed information as "criminal history information." Def.'s Compl. ¶ 6 (May 21, 2008) (See Exhibit A), Plf.'s Resp. Def. Mtn. Dismiss ¶ 5 (July 14, 2008). Accordingly, Section 3789g(a) is not implicated in this case and Plaintiff's reliance thereon is in error.

WHEREFORE, Defendant, CITY OF COUNTRY CLUB HILLS, prays this Honorable Court enter an order granting Defendant's Motion to Dismiss Plaintiff's complaint and any other

relief this Honorable Court deems just and proper.

Respectfully submitted,

NORTON, MANCINI & WEILER

By: /s/ Thomas R. Weiler

Thomas R. Weiler

Thomas R. Weiler
NORTON, MANCINI & WEILER
Attorneys for Defendant, CITY OF COUNTRY CLUB HILLS
111 West Washington Street, Suite 835
Chicago, IL 60602-2793
(312) 807-4999
Attorney No. 06184955

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that the undersigned, an attorney, hereby certifies that he caused the attached **Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss**, to be served upon counsel of record in the above captioned matter at the addresses listed on this certificate of service by regular U.S. Mail on this **22nd** day of **July, 2008**.

Carl R. Menefee, Sr.
3517 Birchwood Drive
Hazel Crest, IL 60429

By: /s/ Thomas R. Weiler
Thomas R. Weiler

NORTON, MANCINI & WEILER
Attorneys for Defendant, CITY OF COUNTRY CLUB HILLS
111 West Washington Street, Suite 835
Chicago, IL 60602-2793
(312) 807-4999
Attorney No. 06184955